



Office of the Attorney General
State of Texas

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October 28, 1994

Honorable Bill Sims
Chair
Natural Resources Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 94-072

Re: Reconsideration of Letter Opinion No. 93-33 (1993) as to whether a state employee may serve on the board of directors of a municipal utility district and receive compensation in the form of a per diem and reimbursement of expenses (ID# 22433)

Dear Senator Sims:

You ask us to reconsider Letter Opinion No. 93-33 (1993), which concluded that a state employee who serves on the board of directors of a municipal utility district may not receive compensation therefor in the form of a per diem. Letter Opinion No. 93-33 relied for its conclusion on the following provision of article XVI, section 40 of the Texas Constitution:

State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

Tex. Const. art. XVI, § 40 (emphasis added).

Section 54.114(a) of the Water Code provides that directors of a municipal utility district are entitled to receive "as fees of office" not more than \$50 a day for each day of service, up to a maximum of \$200 a month, while section 54.114(b) provides for reimbursement of directors' expenses. Since subsection (b) of section 54.114 provides for reimbursement of expenses, Letter Opinion No. 93-33 stated that "any payment rendered pursuant to subsection (a) must necessarily be regarded as 'salary' or 'compensation.'" It concluded that, pursuant to article XVI, section 40, a state employee who served on the board of directors of a municipal utility district could not receive the "fees of office" authorized by section 54.114(a) of the Water Code.

You enclose a letter from the attorney for the municipal utility district in which he states his arguments for overruling Letter Opinion No. 93-33. The letter states that the

constitutional language only prohibits state employees from receiving "salary" for serving as members of local district boards, and does not reach other kinds of compensation. According to this argument, article XVI, section 40, would not prohibit a state employee from receiving a form of compensation other than salary for service on a local district board.

As a general rule, "compensation" is a more comprehensive term than "salary." Attorney General Opinion M-408 (1969). Salary is a form of compensation, *Wichita County v. Robinson*, 276 S.W.2d 509, 519 (Tex. 1954) (defining "salary" as a fixed compensation for regular work), but an employee's compensation may also include benefits, *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928) (describing participation in pension plan as part of city employee's compensation). Article XVI, section 61 of the Texas Constitution provides that all district officers and officers of counties with a population of twenty thousand or more "shall be compensated on a salary basis" and that the commissioners court in the remaining counties shall decide whether county officers, with certain exceptions, "shall be compensated on a fee basis or on a salary basis." Tex. Const., art. XVI, § 61. Article XVI, section 61 distinguishes salary from fees, treating them both as compensation. Thus, in various contexts, "salary" and "compensation" are not equivalent terms.

In the provision of article XVI, section 40 under discussion, however, the legislature used the terms "salary" and "compensation" interchangeably. This provision applies to "[s]tate employees or other individuals who receive all or part of their *compensation* either directly or indirectly from funds of the State of Texas" (emphasis added), but the Senate Joint Resolution proposing this amendment provided that it would appear on the ballot as follows:

The constitutional amendment permitting State employees, who are not State officers, to serve as members of the governing bodies of school districts, cities, towns, or other local governmental districts, *without forfeiting their State salary*. . . .

S.J.R. No. 29, Acts 1971, 62d Leg., at 4133 (emphasis added).¹ The title of the Senate Joint Resolution states that the amendment would permit State employees to serve on local governmental bodies "without forfeiting their *salary* for their State employment." *Id.* (emphasis added).

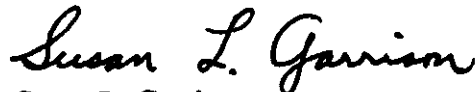
¹Before article XVI, section 33 of the Texas Constitution was amended in 1972, it prevented state employees who served on local governmental bodies from receiving their salary as state employees. *Boyet v. Calvert*, 467 S.W.2d 205 (Tex. Civ. App.—Austin 1971, writ ref'd n.r.e.), *appeal dismissed*, 405 U.S. 1035 (1972). Article XVI, section 33 now merely prohibits the receipt of "salary or compensation" by a person who at the same times holds more than one civil office of emolument, in violation of article XVI, section 40 of the Texas Constitution.

Thus, in referring to the earnings of state employees, the legislature equated "salary" with "compensation." An overall purpose of article XVI, section 40 is to prohibit persons who hold two public positions from receiving compensation in both capacities. See TEX. LEGISLATIVE COUNCIL, PROPOSED CONSTITUTIONAL AMENDMENTS ANALYZED: GENERAL ELECTION, NOVEMBER 7, 1972, at 38-39 (1972). We believe it is consistent with the legislative intent as well as its use of the terms "salary" and "compensation" in the 1972 amendment to article XVI, section 40, to read that amendment as stating that employees "shall receive no . . . [compensation] for serving as members of such governing bodies." The court in *Turner v. Trinity Independent School District*, 700 S.W.2d 1 (Tex. App.—Houston [14th dist.] 1983, no writ), in addressing the provision under consideration, read "salary" of local public officials to mean "compensation." The *Turner* court stated that article XVI, section 40 allows state employees "to serve as *uncompensated* members of local school districts." *Id.* at 2 (emphasis added). We conclude that Letter Opinion No. 93-33 correctly decided that a state employee who serves on the board of directors of a municipal utility district may not receive compensation therefor in the form of a per diem.

S U M M A R Y

Article XVI, section 40 permits state employees or other individuals who receive compensation from state funds to serve as members of the governing bodies of school districts, cities, towns, or other local governmental districts "if they receive no salary" for such service. The term "salary" in this provision means "compensation" in any form. Letter Opinion No. 93-33 (1993) correctly decided that a state employee who serves on the board of directors of a municipal utility district may not receive compensation therefor in the form of a per diem.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee